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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10
11 PAMELA THOMPSON, Individually)
and as Personal)
12 Representative of CHARLES)
THOMPSON, Deceased,)
13)
14 Plaintiff,)
15 vs.)
16 CONSECO SENIOR HEALTH)
17 INSURANCE COMPANY, a)
Pennsylvania corporation,)
18 DOES 1 through XX)
19)
Defendant(s).)

CASE NO.: C 07-05437 PJH
[Sonoma County Superior
Court Case No. 241544]

**DECLARATION OF MARC J. WODIN
RE DEFENDANT'S MOTION FOR AN
ORDER CHANGING TIME PURSUANT
TO LOCAL RULES 6-1 AND 6-3**

Assigned to the Honorable
Phyllis J. Hamilton

20 **DECLARATION OF MARC J. WODIN**
21

22 I, MARC J. WODIN DECLARE:

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24 1. The facts set forth herein are personally known to
25 declarant, who has firsthand knowledge of the same, and if called
26 as a witness, said declarant could and would competently testify
27 thereto under oath.

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1 2. I am an attorney, duly admitted to practice before this
 2 court, and I am a principal in the law offices of Marc J. Wodin,
 3 attorneys of record for defendant Conseco Senior Health Insurance
 4 Company in the above entitled action.

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6 3. The parties mediated this action, and reached a
 7 settlement. Common to such a circumstance, where it is not
 8 feasible to then and there prepare a formal, written settlement
 9 agreement, a cursory, five sentence memorandum, which stated
 10 essential terms of the settlement, was signed by the parties and
 11 their attorneys, to make the settlement binding, with a proviso
 12 that defendant would prepare a Release and Settlement Agreement,
 13 which plaintiff and her attorney would sign. I told plaintiff's
 14 attorney that defendant had a standard Agreement.

15

16 4. I thereafter provided plaintiff's attorney with a
 17 comprehensive Release and Settlement Agreement - defendant's
 18 standard Agreement, with provisions, terms and language usual and
 19 appropriate to such a document, modified, in certain respects for
 20 the particulars of the settlement.

21

22 5. When plaintiff's attorney wrote, questioning two of the
 23 provisions, I wrote back that I would be happy to consider
 24 changes in the language, and requested that plaintiff's attorney
 25 call, so we could discuss the matter. Plaintiff's attorney did
 26 not respond to that letter, or two follow up letters, requesting
 27 that he call to discuss the language of the Agreement.

28

1 6. Plaintiff's attorney then wrote asserting a new position
 2 (inconsistent with his prior assertion, that he only had a
 3 problem with two of the provisions of the Agreement). He now
 4 asserted that the five sentence memorandum was the settlement
 5 agreement, and there could be no written settlement agreement,
 6 stating the settlement, comprehensively and in detail.

7

8 7. I responded that this assertion was contrary to the
 9 language of the memorandum, and the circumstances under which it
 10 was prepared, and was unreasonable, and again offered to meet and
 11 confer on the language of the Release and Settlement Agreement.
 12 Again, there was no response.

13

14 8. On August 11, 2008, defendant filed a Certification that
 15 agreed upon consideration (an executed Release and Settlement
 16 Agreement) had not been provided, and the court vacated its prior
 17 dismissal.

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19 9. On August 27, 2008, plaintiff filed a motion to enforce
 20 the settlement, asserting that the five sentence memorandum is
 21 the settlement agreement.

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23 10. I commenced working on a motion related to the
 24 settlement, when the dismissal was vacated. The motion, which is
 25 more extensive than plaintiff's motion, was completed and filed
 26 September 2, 2008. It seeks alternate orders 1. that plaintiff's
 27 attorney to meet and confer over the language of the Release and

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1 Settlement Agreement; 2. enforcing the settlement, by ordering
 2 plaintiff and her attorney to sign a Release and Settlement
 3 Agreement, with such modifications, if any, as the court deems
 4 appropriate; or enforcing the settlement, by entering judgment
 5 pursuant to the terms of such an Agreement; 3. that plaintiff
 6 and/or her attorney to pay sanctions.

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8 11. When my office contacted the court clerk, on August 29,
 9 2008, we were advised that defendant's motion could not be heard
 10 until October 29, 2008. Accordingly, the motion was filed for
 11 that date.

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13 12. There is good cause to have these motions heard on the
 14 same date, and defendant will be severely prejudiced if they are
 15 not. Both motions concern the same subject matter, a settlement
 16 reached in this matter, and seek to enforce that settlement.
 17 However, they seek to do so on substantially different terms.
 18 Further, defendant's motion also seeks to have the court order
 19 plaintiff to engage in a meet and confer. Having these motions to
 20 be heard at the same time will allow for a complete, uniform,
 21 resolution of the issues related to the settlement and
 22 enforcement of the settlement. Having them heard at different
 23 creates a substantial danger of incomplete and inconsistent
 24 resolution of those issues, and duplication of effort.

25

26 13. On August 29, 2008, my office called the offices of
 27 plaintiff's attorney, and spoke to assistant Michael Sharf, asked
 28

1 if plaintiff would stipulate to changing the time of motions, as
2 sought in this motion, and told him that defendant would
3 otherwise be filing this motion. He said that he would get back
4 to us. He did not do so.

5

6 14. There have been no previous changes to these dates.
7 Changing these dates should not materially effect the schedule of
8 the case.

9

10 I declare under penalty of perjury under the laws of the
11 United States of America that the foregoing is true and correct.

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13 Executed this 2nd day of September, 2008, at Calabasas,
14 California

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16 /s/ Marc J. Wodin
17 MARC J. WODIN
18 DECLARANT

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